

EXHIBIT 87

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Mark Nunez, et al.,

Plaintiffs,

-against-

The City of New York, et al.,

Defendants.

Case No. 11-cv-5845 (LTS)(JCF)

DECLARATION OF JOSEPH MYERS

JOSEPH MYERS, declares under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I make this declaration in support of Plaintiffs' Motion for Contempt and Receivership filed in this case, *Nunez, et al. v. City of New York, et al.*, 11-cv-5845.
2. I have been in the custody of the New York City Department of Correction (DOC) since January 5, 2023.
3. On June 27, 2023, I was incarcerated in Quad 1 Upper, a housing area in the Anna M. Kross Center ("AMKC").
4. I have severe asthma. I currently use my inhaler at least twice a day. I use it more often if I start to have trouble breathing, which can happen if I do physical activity or if I am in a hot environment.
5. When I arrived at Rikers on January 5, 2023, I received a doctor's note showing that I had asthma. The note directed DOC not to spray me, always to handcuff me with my hands in front of my body, and to give me access to my inhaler.
6. On the afternoon of June 27, 2023, my housing unit was taken outside for recreation in the AMKC main yard. On this occasion, it had been a couple of days since I last

went outside, and I missed breathing in the fresh air. I did not bring my inhaler with me that day because I was planning to walk around, not to play ball or do other intense physical activity.

Sometimes just getting fresh air is good enough.

7. As Corrections Officers (“COs”) were escorting my housing unit out of the yard at the end of our recreation time, I noticed that something was going on between COs and other people in my housing unit. The COs escorting us suddenly redirected us toward the small mental observation yard.

8. While I was in that yard, I noticed multiple other COs and Captains entering the mental observation yard. About a few minutes later, a female captain told us to stand with our hands against the wall. I complied.

9. Suddenly, for no reason I could understand, that captain held out her spray can and pointed it at us. Even though I and, as far as I was aware, the other incarcerated people with me had complied with the captain’s orders, she sprayed each of us. She sprayed me on my back, which led me to turn my head to look behind me, and then she sprayed me in my face, directly in my eyes. My eyes burned, and it was too painful to open them. Because I was wearing a tank top, the spray made my entire body burn as it dripped down my body. I felt an intense burning sensation on my back and the backs of my ears. My mouth, especially my lips, and my nose were also burning. It was all so painful.

10. Even though we were outside, the spray lingered in the small yard, creating a cloud of smoke. I felt like I was choking and gagging. I was coughing and having trouble breathing.

11. After I was sprayed, an officer rear-cuffed me with plastic cuffs, ignoring the requirements that I be front-cuffed with access to my inhaler. The handcuffs were extremely tight on one of my wrists. My hand felt numb.

12. A CO then escorted me inside AMKC. He had to guide me because I could not open my eyes from the pain. The other people who had been sprayed were also escorted inside at the same time. While I was being escorted, I asked the CO for medical attention, saying, "I'm an asthmatic and I don't have my asthma pump." I also told that CO that I was not supposed to be rear-cuffed. And I told him that my cuffs were too tight and that I couldn't feel my hand. In response to these statements, the officer said that there was a process that needed to be followed. He said my cuffs would be taken off and I would get medical attention according to that process.

13. While I was being escorted, I spit on the floor, and another detained person told me that I had spit out blood. I did not see the blood myself because my eyes were closed from the pain.

14. After about ten minutes, we arrived at AMKC's back intake. We waited a while before we started the decontamination process. During this time, the spray continued to spread across my body, and I felt an intense burning sensation on my shoulders, in addition to many other places, including my ears, face, and neck. I continued to ask the CO who had escorted me to take me to the clinic, but he again told me I needed to follow the process.

15. The officer who escorted me took off my handcuffs. The handcuffs were so tight on one of my wrists that the officer had trouble cutting them off without cutting my skin. He had to stick a finger in between the cuff and my wrist in order to prevent any marks or scars on my skin when he removed it.

16. I waited for about five minutes until it was my turn for decontamination.

Decontamination is just a cold shower, without soap, that you enter with your clothing on. The first area that I sprayed with cold water was my eyes because they were in so much pain and I still could not open them. In the shower, I finally opened them, and that's when I saw that my hand was blue from the cuffs. I stayed in the decontamination shower for about ten minutes, but the cold water did not remove the spray from my body. It just provided some temporary relief.

17. When I touched a part of my body that had spray on it, the spray then transferred to the part of my body that I touched. While I was in the shower, when I touched my eyes, which felt on fire, to try to get the spray off my eyelashes, the spray transferred to my hands, and those started to burn.

18. When I got out of the decontamination shower, I was in wet clothing. The COs then placed me in a holding cell with other people.

19. In the holding cell, I really needed to urinate. When I did this, the spray, which was on my hands, spread to my private parts, which then also started to burn.

20. Officers eventually gave me a change of clothes, so that I could remove my wet clothing. They did not give me new boxers, and so I had to continue to wear my wet ones.

21. I stayed in the holding cell for about an hour or two, and then the officers took me to the medical clinic.

22. Eventually, the COs escorted me back to my housing unit. I went straight into my cell and started to bathe myself with soap in cold water from the sink in my cell. Using soap helps to get the spray off skin, but it takes many washes. I call this a "birdie bath." I then used my inhaler for the first time since I was sprayed. I probably used about 20 or 30 pumps. My inhaler is for daily use and is not meant to be used for emergencies. It contains 295 pumps of

medicine, and it is supposed to last for three months. If I use it many times in one day, I run out of pumps before getting a replacement. But, that evening, I felt that I had no choice but to use many pumps to restore my breathing from the spray.


23. That night, I slept very little because I was in pain. My private parts, back, face, and arms hurt so badly. When I lay in bed, the spray spread to my sheets and that caused the spray to move to new areas of my body. So did touching parts of my body as I tried to get comfortable or slept. I woke up about three times during the night to scrub myself using cold water and soap in my sink again. From prior experience getting sprayed, I knew it would be a long process to get the spray off, but I kept reminding myself that, sooner or later, the burning would stop.

24. I did not take a shower for two or so days because hot water reactivates the spray, and the showers in AMKC are extremely hot. Eventually, my skin felt better, and I was able to take my first hot shower.

25. This incident changed me. I now carry my inhaler with me when I leave my housing unit, which I do only to go to recreation or to court. I know that anything can happen, and I do not want to take a chance.

26. I have never felt safe at Rikers. Throughout my incarceration, I read the news and hear about the deaths of people in custody. I also witnessed officers abusing people. I try to stay away from the COs, avoid issues, and not partake in anything that could cause me problems, but after I was sprayed in June, I became even more isolated and nervous. I spend most of my time in my cell, sleeping and minding my own business.

Dated: November 09, 2023
New York, New York



Joseph Myers